



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1148]

Certain Integrated Circuits and Products Containing the Same; Commission

Determination to Review in Part a Final Initial Determination Finding No Violation of

Section 337 and, on Review, to Affirm the Finding of No Violation; Termination of the

Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on May 22, 2020, finding no violation of section 337 in the above-referenced investigation and, on review, to affirm the finding of no violation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On March 15, 2019, the Commission instituted Inv. No. 337-TA-1148, *Certain Integrated Circuits and Products Containing the Same* under section

337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Tela Innovations, Inc. of Los Gatos, California (“Tela”). 84 FR 9558-59 (Mar. 15, 2019). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 7,943,966 (“the ’966 patent”); 7,948,012 (“the ’012 patent”); 10,141,334 (“the ’334 patent”); 10,141,335 (“the ’335 patent”); and 10,186,523 (“the ’523 patent”). The complainant also alleges the existence of a domestic industry. The notice of investigation names as respondents Acer, Inc. of New Taipei City, Taiwan; Acer America Corporation of San Jose, California; AsusTek Computer Inc. of Taipei, Taiwan; Asus Computer International of Fremont, California; Intel Corporation of Santa Clara, California; Lenovo Group Ltd. of Beijing, China; Lenovo (United States) Inc. of Morrisville, North Carolina; Micro-Star International Co., Ltd. of New Taipei City, Taiwan; and MSI Computer Corp. of City of Industry, California (collectively, “Respondents”). *Id.* at 9559. The Commission’s Office of Unfair Import Investigations (“OUII”) is also named as a party in this investigation. *Id.*

The Commission has previously terminated the investigation as to the ’966, ’012 and ’335 patents, and as to certain claims of the ’334 and ’523 patents. *See* Order No. 33 (Oct. 2, 2019), *unreviewed by* Notice (Oct. 22, 2019); Order No. 36 (Oct. 23, 2019), *unreviewed by* Notice (Nov. 15, 2019); and Order No. 44 (Jan. 6, 2020), *unreviewed by* Notice (Feb. 3, 2020).

On May 22, 2020, the ALJ issued his “Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond” (“ID/RD”) finding that there is no violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated circuits and products containing the same, in connection with the asserted claims of the ’334 and ’523 patents, and that a domestic industry in the United States that practices or exploits the asserted patents does not

exist.

The ID finds that Respondents directly infringe claims 1, 2, and 5 of the '334 patent, and that claims 1, 2, 5, and 15 of the '334 patent have been shown to be invalid. The ID also finds that Tela's licensee has not been shown to practice any claims of the '334 patent, and that the domestic industry requirement is not satisfied with respect to the '334 patent. The ID finds that there is no violation of section 337 with respect to the '334 patent.

The ID further finds that Respondents directly infringe claims 1-11, 14-20, 25, and 26 of the '523 patent, and that no claims of the '523 patent have been shown to be invalid. The ID also finds that Tela's licensee has not been shown to practice any claims of the '523 patent, and that the domestic industry requirement is not satisfied with respect to the '523 patent. The ID finds that there is no violation of Section 337 with respect to the '523 patent.

All the parties to the investigation filed petitions for review of various portions of the ID. On June 8, 2020, OUII filed a petition seeking review of the ID's determination not to analyze whether the asserted domestic industry claims are invalid and, contingently, seeking review of the ID's infringement findings. Also on June 8, 2020, Respondents filed a petition contingently seeking review of the ID's infringement and validity findings.

On June 11, 2020, Tela filed a petition seeking review of the ID's findings concerning the validity and the technical prong of the domestic industry requirement. Tela also seeks contingent review of the ID's infringement findings and the ID's finding that Intel's 45 nm process is prior art under 35 U.S.C. 102(g)(2). In addition, Tela seeks review of Order No. 30 (Sept. 4, 2019), which granted-in-part Tela's motion for leave to supplement its contention interrogatory responses.

On June 18, 2020, the parties filed responses to the various petitions.

Having examined the record in this investigation, including the final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part to correct a legal error in the ID's domestic industry findings. On review, the Commission has determined to strike the paragraph relating to the '334 patent on pages 101-102 of the ID and certain sentences relating to the '523 patent on page 168 of the ID. The Commission takes no position on the issue of whether the asserted domestic industry claims, *i.e.*, claims 29-30 of the '334 patent and claims 27-28 of the '523 patent, are invalid. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984).

The Commission has also determined to review the ID in part on the issue of whether Tela satisfied the economic prong of the domestic industry requirement, *see* ID at 185-188, and to take no position on this issue. *See Beloit*, 742 F.2d at 1423.

The Commission has determined not to review the remainder of the ID, including the ID's finding of no violation of section 337 in this investigation. The Commission has also determined not to review Order No. 30.

The investigation is terminated.

The Commission vote for this determination took place on September 23, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: September 23, 2020.

Lisa Barton,

Secretary to the Commission.

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